

STATE OF MICHIGAN  
COURT OF APPEALS

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STEPHEN J. MARKS,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

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UNPUBLISHED

September 18, 2003

No. 240510

Jackson Circuit Court

LC No. 01-006081-AW

Before: Smolenski, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

Plaintiff, acting *in propria persona*, appeals as of right the trial court's order granting defendant's motion for summary disposition and dismissing his complaint. We affirm.

On March 7, 1997, plaintiff was sentenced to ten to fifteen years in prison on his plea-based conviction of manslaughter, MCL 750.321.<sup>1</sup> Plaintiff was not eligible to earn good time credits, but was eligible to earn five days of disciplinary credits and two days of special disciplinary credits for each month in which he remained free of a major misconduct. MCL 800.33(2) and (3). Special disciplinary credits are awarded at the discretion of the warden. Any disciplinary credits not earned as a result of a prisoner being found guilty of a major misconduct can never be restored. MCL 800.33(5).

During the period October 1997 to December 1999, plaintiff was convicted of five major misconducts. He automatically forfeited five days of disciplinary credit for each month, and was not eligible to earn special disciplinary credits for those months. The warden ordered additional forfeitures totaling 204 days for the misconducts. On one occasion the warden ordered forfeiture of eighty-five days after plaintiff was found guilty of being an accomplice to a theft. The additional 204 forfeited days could be restored at the discretion of the warden. MCL 800.33(10).

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<sup>1</sup> Another panel of this Court denied plaintiff's delayed application for leave to appeal his conviction (Docket No. 219422).

Plaintiff, acting *in propria persona*, filed suit alleging that the warden exceeded his authority by ordering forfeiture of eighty-five days of disciplinary credits on a single occasion for the reason that pursuant to 1979 AACRS, R 791.5513 (Rule 513), a prisoner found guilty of certain major misconducts could forfeit up to one year of disciplinary credits and special disciplinary credits. Plaintiff contended that because a prisoner was eligible to earn a maximum of only eighty-four days of disciplinary credits and special disciplinary credits in any single year (sixty days of disciplinary credits plus twenty-four days of special disciplinary credits), only a maximum of eighty-four days could be forfeited under Rule 513.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that the forfeiture was valid because Rule 513(1)(v) clearly stated that up to one year of disciplinary credits and special disciplinary credits could be forfeited upon conviction of any of various major misconducts, including theft. The trial court adopted defendant's reasoning and dismissed plaintiff's complaint with prejudice.<sup>2</sup>

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2002). An issue of statutory interpretation presents a question of law that we review de novo. *Ronan v Michigan Public School Employees Retirement System*, 245 Mich App 645, 648; 629 NW2d 429 (2001).

On appeal, plaintiff argues that the warden exceeded his authority by forfeiting eighty-five days of disciplinary credits on one occasion. We disagree and affirm the trial court's decision. Pursuant to MCL 800.33(3) and (5), a prisoner is eligible to earn a maximum of eighty-four days of disciplinary credits and special disciplinary credits in a single year. A prisoner found guilty of a major misconduct shall not earn disciplinary credits or special disciplinary credits for any month in which he is convicted of a major misconduct. MCL 800.33(5). In addition, MCL 800.33(5) provides that the warden may forfeit "all or a portion of the disciplinary credits accumulated prior to the month in which the misconduct occurred." Rule 513 sets out the amount of "additional" accumulated disciplinary credits that may be forfeited under such circumstances. Up to one year of disciplinary credits may be forfeited for various major misconducts, including theft. The forfeiture of additional disciplinary credits allowed under MCL 800.33(5) and Rule 513 is not limited to a maximum of eighty-four days. The warden did not exceed his authority by forfeiting eighty-five days of disciplinary credits after plaintiff was found guilty of being an accomplice to a theft. Plaintiff has not shown that he is entitled to the restoration of any credits. Credits can be restored at the discretion of the warden

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<sup>2</sup> Plaintiff filed both the instant claim of appeal and an application for leave to appeal the trial court's order (Docket No. 242070). In the application, plaintiff argued that the trial court erred by granting defendant's motion for summary disposition before considering his response, and that defendant deprived him of his constitutional rights by forfeiting all of his accumulated disciplinary credits. In an order entered on January 9, 2003, another panel of this Court denied the application for lack of merit in the grounds presented.

and only with the approval of the departmental director. MCL 800.33(10); *Edmond v Dep't of Corrections (On Remand)*, 254 Mich App 154, 157-158; 656 NW2d 842 (2002).

Affirmed.

/s/ Michael R. Smolenski

/s/ William B. Murphy

/s/ Kurtis T. Wilder